App. F. IX-4

Previous References

1936.
(Laws)

File No. 73-36

Serial Nos. 1-4

Letter References.

PRESERVED

20

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Four

Part B for December 1936

SUBJECT.

Legal opinion re use attachment of pay of Deputy Municipal Officer Palau Islands.

Nop 3793/12-12-36

Hyman Serial # 4.

WD 0418—GPB—22,500—2-36-36

Send copy of opinion of Govt Advocate to Member

MSprague
14/12/36

GENERAL AND REVENUE SECRETARIAT.

(Law)

NOTES.

File No. 73-36

FILE HEADING.

Legal opinion regarding the attachment of pay of a Sepoy Sirjiah of the Palace Infantry.

FROM The Huzur Secretary to His Highness the Maharaja of Mysore.

No. 925 Dated 22-9-36 Received 23-9-36

Diary No. 1848	Enclos.	Spare copies	Serial No.

BRIEF ABSTRACT OF LETTER

Requests legal opinion whether the attachment order of the City Magl. direct to the Kille Kacheri Bakshi is maintainable.

NOTES AND ORDERS.

1) It is urged that the order of the Court has to issue through the D.C. of the district. Subd for orders to point out whether the Court attachment order issued by the Court direct to Kille Kacheri Bakshi is maintainable.

23/9

2) The City Magistrate urges that the Court issue an order for the attachment of the pay of a Sepoy of the Palace Infantry

NOTES—First Sheet

WD 02552—GPB—5,000—10-7-80

G.R.S APP F.III—1] 1936.

GENERAL AND REVENUE SECRETARIAT.

(Law)

NOTES.

File No. 73-36

FILE HEADING.

Legal opinion regarding the attachment of pay of a Sepoy Risaldar of the Palace Infantry.

FROM The Huzur Secretary to His Highness the Maharaja of Mysore.

No. 925 Dated 22-9-36 Received 23-9-36

Diary No. 1848	Enclos.	Spare copies	Serial No.

BRIEF ABSTRACT OF LETTER

Requests legal opinion whether the attachment order of the City Magl. direct to the Kille Kacheri Bakshi is maintainable.

NOTES AND ORDERS.

1) It is urged that the order of the Court has to issue through the D.C. of the district. Subd for orders to point out whether the Court's attachment order issued by the Court direct to Kille Kacheri Bakshi is maintainable.

23/9

2) The City Magistrate urges that he can issue an order for the attachment of the pay of a Sepoy of the Palace Infantry

NOTES—First Sheet

WD 02552—GPB—5,000—10-7-30

irrespective of the provisions of the Civil Procedure Code in that Sec 386 (1) (a) of the Crim Procedure Code empowers him to issue a warrant for the levy of the amount by attachment & Sale of any moveable property belonging to the defaulter. I do not think Sec 386 of the Cr. P. Code empowers the City Hqte to pass the order he has passed in this case. In the first place though pay earned may be viewed as a debt & therefore as moveable property capable of attachment & Sale under sec 386, pay to be earned cannot be similarly treated × (27 Cal 38 1929 A 91. Power to attach Salaries before they become due is a power given under order 21 rule 48 C.P. Code & this power is not within the powers vested in Magistrates under Sec 386 Cr.P.Code. In the second place Sec 386 empowers attachment & Sale and not a direction to the debtor to pay the amount attached into Court. Thirdly I doubt very much if the pay in question in this case can be deemed to be moveable property within the meaning of Sec 386 Cr.P.Code. ~~Fourthly~~ Fourthly, it is not clear if the

1848 3

General & Revenue Secretariat. Law File No. 73 of 1936. [App. F. III–2

Serial No.

The Kille Kacheri Barakur may direct
in this case
magistrate, has actually issued a warrant as prescribed in Sec 386 Cr P Code or whether the attachment is sought to be made by means of the letter addressed to the Kille Kacheri Barakur on 3 July 1936 If it is the latter, I think the letter may be ignored & no action taken thereon. If however the Magistrate has passed a judicial order in the matter the Kille Kacheri Barakur may take up the matter before the ~~Higher~~ higher Courts and get the order vacated.

2) ~~Remarks~~ The question whether the order ~~of~~ requiring the payment of Rs 8/- per month as maintenance is right or not does not arise now & there are no materials on which any opinion on this matter can be given. The Magistrate however has power under Sec 488 (3) to enforce this order by imprisonment of the defaulter concerned and it is not clear why the Kille Kacheri Barakur cannot advise the man to obey the Court's order, especially when it is one passed ~~with~~ his own undertaking given to the Court, as stated in the City Magistrate's letter of 3-7-36

NOTE—Contn. Sheet.

Chief Secy
thro under Secy, Pol

Pol 25/9/36

4

1849

Law File No.) 3 of 1936.

General and Revenue Secretariat

4) I agree with the note of the Asst Secy.

5) The city magistrate can now by means of a letter attach the salary under Sec 386 cl 1 of the Cr Pro Code. A warrant should always be sent to the police for attaching & selling the moveables. The pay to be earned month by month cannot be attached in advance. Much less can it be sold: this section does not contemplate an order on a third party: The order of the city magistrate on the Taluk Kacheri Bailiff is not in accordance with Sec 386. (Please see page 1299. para 2 of Ranga Reddi's Cr Pro Code. V Edn)

25.9

Yes. this is the chief point. MS

Chief Secy.

6) The correspondence may be sent to the Dt. magte. for a report on the facts of the case with his own views, and the connected records.

(for member)

26/9

MS 26/9

2/10 MS 2/10

7) Draft

MS 2/10

CHIEF SECRETARY 25 SEP 1936

OFFICE OF THE FIRST MEMBER OF COUNCIL 1 OCT 1936 1223

Serial No.

Law

1) Dept. put up.
CA
31/10/36
with

2) Decree
MR
29/10

TYPING SECTION
3. OCT. 1936
GENL & SECTT.

Sms —
6-10-36
PL - remind on
26-10-36

No. P-318, Dt 6-10-36

From
the Dist Magt.
Mysore

Letter no. G.1 - 514/36-37, dt 13th Oct: '36
forwards a Report with the reference received
from the city Magt, Mysore explaining the
facts of the Case.

3) Subd. the Dist Magistrate is of opinion
that the Salary of the Depoy Cannot, as
Contended by the Palace Dept, be exempted
from attachment. The Govt Advocate may
perhaps be Consulted.

SB
19/10
note

4) As already explained in para 2
of my note above, pay before it becomes
due is not moveable property which
is capable of attachment under
Sec 38 Cr. P. Code. 1934 Rangoon 82
is a clear authority on the point and
the principle on which it is based is
supported by 27 Cal 38 and 1929 Nag
333. The analogy of attachment
of Salary in execution of a money decree

NOTE—Contn: Sheet.

Laws File No. 73 of 1936 | General and Revenue Secretariat

is of no use, since the Civil Procedure Code in order 21 rule 48 makes special provision for such attachments, but only in the case of certain employees.

12) The city magistrate in his explanation of 7th Oct 1936 rightly observes that an order of the Court cannot be rectified except by means of an appeal or revision to a higher tribunal. But the information furnished by him alone indicates that the warrant of attachment of moveables issued by the Court was returned, and the so called attachment of salary is sought to be effected by means of correspondence with the Kille Kacheri Bakshi. There is therefore no order of the Court which can be made the subject of an appeal or revision, unless such an order is to be inferred from the letter addressed to the Bakshi -

13) Submit Res/Proceedings - Refer paras 3 & 6 above.

Chief Sec) thro' H.S. Prof. 19/10.

14) I agree with the above note. The Deputy Commr in the latter part of his note refers to A I R 1934 Rangoon 82 where it is clearly held that

Serial No.

a Salary not drawn from the Treasury does not belong to the defendant and therefore the Magistrate can issue a warrant only to attach money actually belonging to defendant. He concedes that this decision is adverse to the contention raised by the City Magistrate.

15) This does not appear to be a matter in which the Government can be asked to issue instructions. It is for the City Magistrate to interpret the Law as it is and proceed to orders. A Salary to be earned in future cannot be a moveable property.

16) The meaning of moveable property is given in Sec 22 of I.P.C as a corporeal property. This definition is followed in the Code of Criminal Procedure under Sec 4(2). This definition cannot be made to include a future right to draw a Salary month by month.

Chief Secretary) WD 22-10

22 OCT. 1936

(1st member)

17) MS 24/10

18) The G.A may also be consulted as it raises an important point WD 21-10

WD 3/11

17) MS 5/11

21) WD

WD 0417—GPB—80,000—3-9-36

8 1 1935

Law File No. 73 of 1936. | General and Revenue Secretariat

Serial No. G.O.No.p.89836 dated 3-11-36.

21) Forwarded with Compliments to the Govt Advocate for favour of opinion and advice.

Secretary & for Govt Secy

Returned with compliments. 7. No. 378/36-37 of 5.11.36

22) The proceedings have been initiated by means of a letter from the learned City Magistrate to the Killa Katcheri Bakshi. I think that is not the formal way contemplated by the Code. So, for the purpose of discussion, we have to assume that the letter should be deemed to be a warrant of attachment contemplated under Section 386 (A) of the Criminal Procedure Code. G.O. No. 88/36-37 of 28.11.36.

23) The object of realizing the amount of maintenance from the pay of the Sepoy concerned which was the reason for the learned City Magistrate to write the letter to the Killa Katcheri Bakshi can be easily achieved by exercising the powers under section 386 (B) of the Criminal Procedure Code. Under the latter provision, it is clear that the Deputy Commissioner who shall be deemed to be the Decree-Holder is entitled to get the pay attached. In this case, there is an exemption because the salary is below the minimum fixed in Section 60 of the Civil Procedure Code. This exemption is based on public policy, namely that the Government work should not suffer by the detraction to which the debtor will be subjected to by a portion of his small salary being cut off.* Such an exemption based on such broad grounds should not be allowed to be got round by means of resorting

*The exemption regarding the pay and allowances of the Sepoy who belongs to the Mysore Military Forces are based on public policy in the interests of securing public safety will also get whittled down.

Serial No.

resorting to section 386 (A) of the Code.

24) Since the special provisions of the Civil Procedure Code viz., O. 21, R. 48 do not apply to the procedure proposed to be adopted by the learned City Magistrate under section 386 (A) of the Criminal Procedure Code, one warrant will not suffice to enforce a monthly recurring payment towards maintenance, for the property over which the attachment can be placed *will come into existence only* on the first of each month and there cannot be an attachment without the property having been in existence at the time of the said attachment. That is why the provision under the Code of Civil Procedure, which is virtually an attachment in anticipation of the property to come into existence in futuro is said to be special to that Code.

25) Such a thing is attempted to be read into section 386 (A), which in my opinion, the words of that section do not allow a construction of the kind to be placed on them.

26) Rules regarding the recovery of fines (maintenance allowance is for the purpose, the same as fine) contemplate ordinarily, a warrant to a Police Officer. No reason is shown in this case why it is out of the normal.

27) The letter not being a warrant and even if construed as a warrant that not being intra vires of the powers of the learned Judicial Officer, in my opinion, it is quite legitimate for the Killa Katcheri

2435

10

Law File No. 73 of 1936. | General and Revenue Secretariat

Serial No.

Bakshi to ignore the letter.

Mr. Venkatarama Iyengar Narasimhappa
Government Advocate.

H/27.11.36.

GENERAL SECRETARIAT
28 NOV. 1936
Pro

Chief Secretary,
through Under Secy (Rm.)

BKR
28.11.36

The Government Advocate's view appears to be reasonable and correct

1st member

KR
30.11.

MRS
30/11

BKR
30.11

CHIEF SECRETARY
30 NOV. 1936
GOVT OF MYSORE.

OFFICE OF THE FIRST MEMBER
30 NOV 1936
No. 3635

Draft
7/12

MRS
7/12

BKR
7.12

Subd with a dft for approval.

9/12

DSme
BKR
9.12.

TYPING SECTION
10 DEC. 1936
GENL.

To

The Hon'ble Secy
to H.H. the Maharaja of Mysore

No P. 3793, dated 12-12-36.
forwarding a copy of G.A's opinion.

B
14-12-36

1848/36

Telegram :—"HUSEC."

THE PALACE,
MYSORE.

21st September 1936.

925/3 Law

Law 73-36-1

FROM

RAJASABHABHUSHANA
T. THUMBOO CHETTY, ESQ., B.A., O.B.E.,
Huzur Secretary to His Highness
the Maharaja of Mysore.

CHIEF SECRETARY
Law
23 SEP. 1936

To

The Chief Secretary
to the Government of Mysore,
Bangalore.

Sir,

I have the honor to enclose herewith copies of correspondence in connection with the attachment of pay of a Sepoy, Lingiah of the Palace Infantry in Case No.C.Mis.17/35-36 and to request the favour of the opinion of the Government as to whether the attachmant order of ~~Mr~~ the Magistrate direct to the Kille Kacheri Bakshi is maintainable.

The pay that Lingiah gets is Rs 14/- per mensem and as per Sec.60 Clause i (i) and j of Civil Procedure Code it is exempt from attachment. Even though the order of the Magistrate is as per Sec. 386 1(b) of Criminal Procedure Code, I am of opinion that it has to issue through the Deputy Commissioner of the District, who has to adopt the Civil Process alone whether the property to be attached is movable or not.

I have the honor to be,

Sir,

Your most obedient servant,

For Huzur Secretary.

VGB/DFTR.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 2318 Law 73-36-2 Dated, Bangalore, 5th October 193 6.

Enc 6

From

The *Chief Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,

Mysore District, Mysore.

Sir,

I am directed to forward herewith copies of correspondence to be kindly returned with your reply. between the City Magistrate, Mysore and the Kille Kacheri Bakshi, Palace, Mysore, regarding the recovery of maintenance charges from Lingaiya, a Sepoy of the Palace Infantry and to request that a report on the facts of the case with your views and the connected records may kindly be sent at an early date.

I have the honour to be

Sir,

Your most obedient servant,

For Chief Secretary to Government.

Appendix F G—1j

SUBJECT.....

.....

.....

Section Law
File No. 73-36
Serial No. 2

Diary No. of letter replied to.....

No. P2318/Sec 3

To The Dist Magistte
Mysore Dist
Mysore

General and Revenue Secretariat

( )

the *193* .

Date of issue 6.10.36

Signed by Mr. N.R.J.R.

to be kindly returned with your reply

Sir

I am directed to forward herewith copies of correspondence between the city Magistte, Mysore and the Kille Kasheva Bakshi Palace, Mysore, re the recovery of maintenance charges from Lingaiya, a Sepoy of the palace Infantry and to request that a report on the facts of the case with your views and the connected records may kindly be

List of enclosures.....

Copied by GR 5/10

Examined by.....

Sent at an early date.

Thanks etc

MC
3/10.

For Chief Secretary

2435 P 2325

No. G1-514/36-37
Enc. 11

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

Dated, Mysore, 13th October 1936.

Law 73-36-

FROM

T.G.RAMA IYER, Esq., B.A.,
~~THE~~ DISTRICT MAGISTRATE,
MYSORE DISTRICT, MYSORE.

To

B. T. KESAVAIENGAR, Esq., B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

SIR,

Referring to your letter No.P.2318/Law 73-36-2 dated the 6th instant calling for a report with my opinion on the correspondence between the City Magistrate, Mysore and the Kille Kacheri Bakshi, Palace, Mysore, regarding the recovery of maintenance charges from Lingaiya, a sepoy of the Palace Infantry, I have the honour to enclose herein, in original, the reference received from the City Magistrate, Mysore, explaining the facts of the case.

As the warrant of attachment has been issued by the Magistrate under Section 386(1)(a) Cr.P.C. the contentions raised by the Palace Department relying on the Civil Procedure Code or on Section 386(1) (b) are not relevant. The words used in Section 386(1)(a) are "any moveable propery" and the exemptions from attachment under Section 60 of the Civil Procedure Code cannot apply to criminal fines. The salary of the sepoy cannot as contended by the Palace Department, be exempted from attachment on the ground either that it is the pay of a sepoy or that it does not exceed Rs. 20/- per mensem.

The only question for decision is whether "Salary" can be included in the term 'any moveable property' for purposes of attachment under Section 386(1)(a) Criminal Procedure Code. In the Mysore Criminal Procedure Code of 1904, the words used in Section 386 were "Distress and sale of any moveable property" and the corresponding words used in the form of attachment under Section 386 i.e., Form No.XXXVII Schedule V are "make distress by seizure of any moveable property". It is therefore obvious that

that the word "moveable property" according to old Section 386 of the Criminal Procedure Code of 1904 referred to distrainable moveable property i.e., according to Section 4(2) of the Cr.P.C. "corporeal property." But by Regulation VI of 1927 the words have been changed from "distress" to "attachment", and the corresponding change has been made in Form No.XXXVII from "make distress by seizure" to "attach": 'It cannot therefore be said on the mere authority of Section 4(2) of the Criminal Procedure Code that "moveable property" according to Criminal Procedure Code includes only "corporeal property". That the definition of "moveable property" in the Indian Penal Code as 'corporeal property' is not the meaning of "moveable property" in the Criminal Procedure Code for purposes of attachment is very clear from Section 88 Cl.(3) Criminal Procedure Code. Section 88 Cl.(3) Cr.P.C. refers to attachment of "debt or other moveable property" and indicates also the manner in which that attachment should be effected according to the nature of the property. The attachment of moveable property may be by (a) seizure, (b) appointment of receiver or (c) prohibitory order.

The only further point requiring consideration is whether salary is attachable moveable property. There seems to be no reason why an attachment of salary under Section 386(1)(a) cannot be effected in the manner indicated for the attachment of debt or other moveable property under Section 88(3) (c) Cr.P.C. and in the manner laid down in Order XXI Rule 48 Civil Procedure Code when under Section 386(2) Criminal Procedure Code, the Government has power to make rules as to the mode of attachment of moveable property. However kind reference is invited to A.I.R.1934 Rangoon 82 where it has been held that "If salary has not yet been drawn from the Treasury it does not yet belong to the salary earner, and that a Magistrate's warrant should be so worded as to make it clear that only money actually belonging to the defaulter was to be attached." The requisition sent by

the

7

the Magistrate to the salary disbursing Officer is only for the attachment of a part of the salary after it is drawn from the Treasury viz., after it has become attachable moveable property belonging to the delinquent but in the custody of the salary disbursing officer. Otherwise it would be causing considerable inconvenience to the recovery of fines and maintenance charges if it should be held that criminal court fines cannot be recovered by attachment of salary while a decree for even a private debt could be so recovered. In view however of the adverse decision in A.I.R. 1934 Rangoon 82, I request that legal opinion may kindly be obtained and instructions communicated.

The alternative method open to the Magistrate, i.e., to imprison the sepoy for non-payment of the part of the salary, would be a much more drastic punishment, than recovery of a portion of his salary.

The enclosures received with your letter under reply are herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

DISTRICT MAGISTRATE,

Mysore District.

NRS

Appendix F G—1]

8

SUBJECT.....

.....

.....

Section Law

File No. 73 - 36

Serial No. 4

Diary No. of letter replied to.....

No. P 3798 / Genl 10.

To

The Huzur Secretary
to His Highness the
Maharaja of Mysore

General and Revenue Secretariat

( )

the *193* .

Re: attachment of pay of
a Sepoy Lingiah of the
Palace Infantry.

Date of issue.....12...12...36.....

Signed by Mr. BKR

Sir,

With Reference to your
letter no. 925, dated 21st Sept.
36 forwarding Copies of
Correspondence on the above
Subject, and Requesting whether
the attachment order of the
Magistrate direct to the
Kille Kacheri Bakshi .. is
maintainable, I am

List of enclosures.....

Copied by 11/12

Examined by.....

WD 03601—GPB—30,000—23-9-35

directed to forward herewith a Copy of the Opinion of the Govt Advocate in the matter.

The papers Received with your letter under Reference are herewith Returned

I have etc

BHR

Gen: Secy

10

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 3798 Law 72-36-4.
Cen 10.

Dated, Bangalore, 11th December 193 6.
12

From

The General *Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Huzur Secretary
to His Highness the Maharaja of Mysore.

Sir, Regarding attachment of pay of sepoy Lingiah of the Palace Infantry.

With reference to your letter No.925 dated 21st September 1936 forwarding copies of correspondence on the above subject, and requesting whether the attachment order of the Magistrate direct to the Kille Kacheri Bakshi is maintainable, I am directed to forward herewith a copy of the opinion of the Government Advocate in the matter.

The papers received with your letter under reference are herewith returned.

I have the honor to be,

Sir,

Your most obedient servant,

for General Secretary to Government.

c.n.2